

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEVEN CUTCHIN, DANIEL CRAWFORD,
JEROME JAMISON, ANTHONY MORROW,
KEITH RHAMES, JARED SMITH, ROBERT
PENA, ADOLFO FORMOSO, SAM RICO,
FERNANDO RODRIGUEZ, PATRICK WALSH
and JOSHUA VASQUEZ,

Plaintiffs,

-against-

CHARLES W. HOWARD, CALL-A-
HEAD CORP., CALL-A-HEAD
PORTABLE TOILETS, INC.,

Defendants.
-----X

**ANSWER TO FIRST
AMENDED COMPLAINT
WITH AFFIRMATIVE
DEFENSES**

21-CV-3162(KAM)(LB)

Demand for Jury Trial

The Defendants CHARLES W. HOWARD, CALL-A-HEAD CORP., CALL-A-HEAD PORTABLE TOILETS, INC., ("Defendants"), by their attorneys, The Scher Law Firm, LLP, Answer the First Amended Complaint as follows:

PRELIMINARY STATEMENT

1. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered "1" of the First Amended Complaint.
2. Admit the allegations set forth in paragraph number "2" of the First Amended Complaint.
3. Deny the allegations set forth in paragraph number "3" of the First Amended Complaint.
4. Deny the allegations set forth in paragraph number "4" of the First Amended Complaint.
5. Deny the allegations set forth in paragraph number "5" of the First Amended Complaint.

6. Deny the allegations set forth in paragraph number “6” of the First Amended Complaint.

JURISDICTION AND VENUE

7. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “7” of the First Amended Complaint.

8. Admit the allegations set forth in paragraph number “8” of the First Amended Complaint.

9. Admit the allegations set forth in paragraph number “9” of the First Amended Complaint.

10. Admit the allegations set forth in paragraph number “10” of the First Amended Complaint.

JURY DEMAND

11. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “11” of the First Amended Complaint.

PARTIES

12. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “12” of the First Amended Complaint.

13. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “13” of the First Amended Complaint.

14. Admit the allegations set forth in paragraph number “14” of the First Amended Complaint.

15. Admit the allegations set forth in paragraph number “15” of the First Amended Complaint.

16. Deny the allegations set forth in paragraph number “16” of the First Amended Complaint.

17. Deny the allegations set forth in paragraph number “17” of the First Amended Complaint.

STATEMENT OF FACTS

18. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “18” of the First Amended Complaint.

19. Deny the allegations set forth in paragraph number “19” of the First Amended Complaint.

20. Deny the allegations set forth in paragraph number “20” of the First Amended Complaint.

21. Admit the allegations set forth in paragraph number “21” of the First Amended Complaint.

22. Deny the allegations set forth in paragraph number “22” of the First Amended Complaint.

23. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “23” of the First Amended Complaint.

24. Admit the allegations set forth in paragraph number “24” of the First Amended Complaint.

25. Deny the allegations set forth in paragraph number “25” of the First Amended Complaint.

26. Deny the allegations set forth in paragraph number “26” of the First Amended Complaint.

27. Deny the allegations set forth in paragraph number “27” of the First Amended Complaint.

28. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “28” of the First Amended Complaint.

29. Deny the allegations set forth in paragraph number “29” of the First Amended Complaint.

30. Deny the allegations set forth in paragraph number “30” of the First Amended Complaint.

31. Deny the allegations set forth in paragraph number “31” of the First Amended Complaint.

32. Deny the allegations set forth in paragraph number “32” of the First Amended Complaint.

33. Deny the allegations set forth in paragraph number “33” of the First Amended Complaint.

34. Deny the allegations set forth in paragraph number “34” of the First Amended Complaint.

35. Deny the allegations set forth in paragraph number “35” of the First Amended Complaint.

36. Deny the allegations set forth in paragraph number “36” of the First Amended Complaint.

37. Deny the allegations set forth in paragraph number “37” of the First Amended Complaint.

38. Deny the allegations set forth in paragraph number “38” of the First Amended Complaint.

39. Deny the allegations set forth in paragraph number “39” of the First Amended Complaint.

40. Deny the allegations set forth in paragraph number “40” of the First Amended Complaint.

41. Deny the allegations set forth in paragraph number “41” of the First Amended Complaint.

42. Deny the allegations set forth in paragraph number “42” of the First Amended Complaint.

43. Deny the allegations set forth in paragraph number “43” of the First Amended Complaint.

44. Admit the allegations set forth in paragraph number “44” of the First Amended Complaint.

45. Deny the allegations set forth in paragraph number “45” of the First Amended Complaint.

46. Deny the allegations set forth in paragraph number “46” of the First Amended Complaint.

AS AND FOR A FIRST CLAIM
Fair Labor Standards Act – Overtime Wages

47. Defendants repeat and re-allege each and every response set forth in paragraphs 1 through 46 of this Answer as if fully set forth at length herein.

48. Deny the allegations set forth in paragraph number “48” of the First Amended Complaint.

49. Admit the allegations set forth in paragraph number “49” of the First Amended Complaint.

50. Admit the allegations set forth in paragraph number “50” of the First Amended Complaint.

51. Deny the allegations set forth in paragraph number “51” of the First Amended Complaint.

52. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “52” of the First Amended Complaint.

53. Deny the allegations set forth in paragraph number “53” of the First Amended Complaint.

54. Deny the allegations set forth in paragraph number “54” of the First Amended Complaint.

55. Deny the allegations set forth in paragraph number “55” of the First Amended Complaint.

56. Deny the allegations set forth in paragraph number “56” of the First Amended Complaint.

AS AND FOR A SECOND CLAIM
New York Labor Law – Overtime Wages

57. Defendants repeat and re-allege each and every response set forth in paragraphs 1 through 56 of this Answer as if fully set forth at length herein.

58. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “58” of the First Amended Complaint.

59. Deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph numbered “59” of the First Amended Complaint.

60. Deny the allegations set forth in paragraph number “60” of the First Amended Complaint.

61. Deny the allegations set forth in paragraph number “61” of the First Amended Complaint.

62. Deny the allegations set forth in paragraph number “62” of the First Amended Complaint.

63. Deny the allegations set forth in paragraph number “63” of the First Amended Complaint.

AS AND FOR A THIRD CLAIM
New York Labor Law – Failure to Provide Proper Wage Statements

64. Defendants repeat and re-allege each and every response set forth in paragraphs 1 through 63 of this Answer as if fully set forth at length herein.

65. Deny the allegations set forth in paragraph number “65” of the First Amended Complaint.

66. Deny the allegations set forth in paragraph number “66” of the First Amended Complaint.

67. Deny the allegations set forth in paragraph number “67” of the First Amended Complaint.

AS AND FOR A FOURTH CLAIM
New York Labor Law – Failure to Provide Proper Annual Wage Notices

68. Defendants repeat and re-allege each and every response set forth in paragraphs 1 through 67 of this Answer as if fully set forth at length herein.

69. Deny the allegations set forth in paragraph number “69” of the First Amended Complaint.

70. Deny the allegations set forth in paragraph number “70” of the First Amended Complaint.

71. Deny the allegations set forth in paragraph number “71” of the First Amended Complaint.

PRAYER FOR RELIEF

72. Defendants are not required to respond to the allegations contained in Plaintiff’s Prayer for Relief because those allegations are merely characterizations of the relief requested by Plaintiff. To the extent that a response is required, Defendants deny that Plaintiff is entitled to the relief he seeks.

DEMAND FOR JURY TRIAL

73. Defendants hereby request, pursuant to FCRP 38(b) a jury trial on all claims so triable.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

74. The Plaintiff’s claims are barred, in whole or in part, by the applicable statutes of limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

75. The Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of laches.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

76. The Plaintiff fails to state a cause of action upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

77. Plaintiffs were at times relevant exempt from the overtime provisions of the FLSA § 7, 29 U.S.C. § 207, and the New York State overtime regulations, 12 N.Y.C.R.R. § 142-2.2, pursuant to FLSA § 13(b)(1), 29 U.S.C. §213 (b)(1).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

78. Defendants' defense to certain allegations contained in the Complaint rests upon documentary evidence.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

79. The Plaintiff's claims are barred, in whole or in part, by the Final Order issued in the matter of *Vargas v. Howard*, S.D.N.Y. Docket No. 15-cv-5101.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

80. The Plaintiff's claims are barred, in whole or in part, by the Class Action Settlement Agreement resolving the matter of *Vargas v. Howard*, S.D.N.Y. Docket No. 15-cv-5101.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

81. The Plaintiff's claims are barred, in whole or in part because the Plaintiffs have been overpaid.

WHEREFORE, the Defendants respectfully request that the Court: (a) dismiss the Plaintiff's First Amended Complaint herein in its entirety; (b) award the Defendants, costs, fees, disbursements, reasonable attorneys' fees; and (c) such other and further relief this Court deems just, proper and equitable.

Dated: Carle Place, New York
August 30, 2021

THE SCHER LAW FIRM, LLP
Attorneys for Defendants



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